

The Telecommunications Excise Tax is imposed upon the act or privilege of originating or receiving intrastate or interstate telecommunications in Illinois at the rate of 7% of the gross charges for such telecommunications purchased at retail from retailers. See 86 Ill. Adm. Code 495. (This is a GIL).

February 7, 2002

Dear Xxxxx:

This letter is in response to your letter dated August 24, 2001. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120(b) and (c), which can be found on the Department's website at <http://www.revenue.state.il.us/legalinformation/regs/part1200>.

In your letter, you have stated and made inquiry as follows:

Our firm represents a taxpayer, which desires to participate in the Voluntary Disclosure Program for Illinois Sales and Use Tax and any other Illinois tax for which it may be liable. We submit the following facts about the taxpayer in connection with this request:

1. The taxpayer is a foreign corporation doing business in Illinois
2. The taxpayer sells several services, which may be subject to Illinois sales and use tax or some level of telecommunication tax (see explanation of services below).
3. The taxpayer has collected some taxes, but to date has not remitted them
4. The taxpayer began doing business in Illinois in 1998
5. The taxpayer has not been contacted by the Illinois Department of Revenue
6. The taxpayer has recently changed accounting firms and the records are in the process of being reviewed to get an estimate of the amount of taxes due.

In order for the amount of tax to be calculated and remitted taxpayer needs a ruling or policy decision on what sales tax they should be collecting and remitting based on the type of business they do. Also, the taxpayer needs to know what other types of taxes (such as telecommunications) they should be remitting to the State of Illinois.

Taxpayer offers videoconferencing network services for customers in various states. All network customers receive videoconferencing services that are billed on a flat per-minute rate. Taxpayer offers two programs one with unlimited inbound bridge ports and another with discounted bridge ports. Taxpayer offers network maintenance agreements and training services to go along with the videoconferencing service. The taxpayer also provides ISDN coordination services and training services for customers in its' network service program. Coordination of ISDN installation is billed at a flat per site fee for

customers not taking advantage of the taxpayers' network service program. Training service is charged by the hour for customers not taking advantage of the taxpayers' network service program.

The taxpayer may arrange for a local telephone carrier to install an ISDN BRI and PRI phone line at the customer's location. The local line is in the customer's name and is paid for by the customer. Long-distance service on the customer's phone line is enrolled in the taxpayers name and paid for by the taxpayer. The taxpayer is being billed sales tax and/or telecommunications tax by the long distance carriers. In addition the taxpayer collects sales tax and/or telecommunications tax on the amount it charges its customers. As an example the taxpayer may pay \$0.08 per-minute plus tax on the cost of long distance while charging its' customer \$0.10 per minute plus tax for videoconferencing service. Therefore the long distance carrier and the taxpayer are collecting tax on the same call.

Considering that the taxpayer has potential tax collection issues as well as potential resale issues on taxes it is paying, the taxpayer respectfully requests an expeditious processing of this ruling request. In addition to the ruling or tax policy decision the taxpayer requests a voluntary disclosure agreement.

Your help and consideration in these matters are greatly appreciated. Please call me if I may be of further assistance or answer any questions.

The Telecommunications Excise Tax is imposed upon the act or privilege of originating or receiving intrastate or interstate telecommunications in Illinois at the rate of 7% of the gross charges for such telecommunications purchased at retail from retailers. See 86 Ill. Adm. Code 495, enclosed.

Pursuant to Section 495.100(a), "gross charge" means the amount paid for the act or privilege of originating or receiving telecommunications in this State and for all services and equipment provided in connection therewith by a retailer, valued in money, whether paid in money or otherwise, including cash credits, services and property of every kind or nature, and shall be determined without any deduction on account of the cost of such telecommunications, the cost of material used, labor or service cost or any other expense whatsoever.

As noted above, the Telecommunications Excise Tax is imposed on 7% of the gross charges and gross charges means the amount paid for the act or privilege of receiving or originating telecommunications in Illinois. The *amount paid* means the amount charged to the taxpayer's service address in this State regardless of where such amount is billed or paid, 35 ILCS 630(2)(b). "Service address" means the location of telecommunications equipment from which the telecommunications services are originated or at which telecommunications services are received by a taxpayer. In the event this may not be a defined location, as in the case of mobile phones, paging systems, maritime systems, air-to-ground systems and the like, service address shall mean the location of a taxpayer's primary use of the telecommunications equipment as defined by telephone number, authorization code, or location in Illinois where bills are sent. See 35 ILCS 630/2(n) and 86 Ill. Adm. Code 495.120.

Teleconferencing, including videoconferencing, represents an especially difficult application of the term "service address". We have discovered that taxpayers are using three methods of calculating the tax. The first is that some taxpayers calculate the Telecommunications Excise Tax based upon the location of the bridging or videoconferencing equipment. The second is that some

calculate the Telecommunications Excise Tax based upon the customer's billing address. The third is that some consider the teleconference (or videoconference) provider to be a user of telecommunications and pay tax to their telecom suppliers.

The Streamlined Sales Tax Project is currently examining this question, and has developed two alternatives regarding the manner in which tax should be calculated. They are discussing calculation of Telecommunications Excise Tax based on the location of the equipment or based on a customer's billing address. The project has not recommended an option to the Implementing States and the Department does not know which option the Implementing States will finally adopt. For that reason, we suggest that you continue to calculate the tax as you have been. When the Implementing States adopt a recommendation from the Streamlined Sales Tax project, the Department will promulgate a regulation and give it prospective application.

Transmission charges that are purchased for resale should be purchased by providing a certificate of resale to the supplier. Gross charges do not include charges for customer equipment, including such equipment that is leased or rented by the customer from any source, wherein such charges are disaggregated and separately identified from other charges (Section 2(a)(4) of the Act). However, if equipment is sold or leased, Retailers' Occupation Tax or Use Tax, respectively, may be incurred.

If both transmission and data processing services are provided, the charges for each must be disaggregated and separately identified. See 86 Ill. Adm. Code 495.100(c), enclosed. The statute does not require disaggregation on the customers' invoice, however. Therefore, it is the Department's position that so long as the non-telecommunications charges are disaggregated from the telecommunications charges in the retailers' books and records, for audit purposes, such disaggregation need not be shown on the customers' invoice. If the non-telecommunications charges are not disaggregated from the telecommunications charges, the full amount will be subject to Telecommunications Excise Tax. If none of the charges billed were for telecommunications, then none of the charges would be subject to tax.

We are unable to determine the nature of the training and coordination services that you charge for. Depending on what these services are and how they are billed, they may be subject to Telecommunications Excise Tax or Service Occupation Tax.

Effective January 1, 1998, the Telecommunications Municipal Infrastructure Maintenance Fee Act (Act) (35 ILCS 635/1 et seq.) provides for the imposition of various fees upon telecommunications retailers.

Section 15 of the Act imposes a State infrastructure maintenance fee upon telecommunications retailers, as that term is defined in 35 ILCS 635/10, "equal to 0.5% of all gross charges charged by the telecommunications retailer to service addresses in this State for telecommunications, other than wireless telecommunications, originating or received in this State." (35 ILCS 635/15(b).) Section 15 also provides for an optional infrastructure maintenance fee which telecommunications retailers may pay "with respect to the gross charges charged by the telecommunications retailer to service addresses in a particular municipality for telecommunications, other than wireless telecommunications, originating or received in the municipality...." (35 ILCS 635/15(c).) These fees are collected, enforced and administered by the Illinois Department of Revenue. (35 ILCS 635/25(b))

Section 20 of the Act provides that municipalities may impose a municipal infrastructure maintenance fee upon telecommunications retailers. This fee is based upon gross charges charged

by the telecommunications retailers to service addresses in the municipality for telecommunications originating or received in the municipality. This fee is collected, enforced, and administered by the municipality imposing the fee. (35 ILCS 635/25(c).)

Illinois municipalities are also authorized to impose a municipal telecommunications tax. (See 65 ILCS 5/8-11-17.) The tax is imposed on the act or privilege of originating in such municipality or receiving in such municipality intrastate or interstate telecommunications by a person at a rate not to exceed 5% of the gross charges for such telecommunications purchased at retail by such person. (See 65 ILCS 5/8-11-17(a)(1) and 65 ILCS 5/8-11-17(a)(2).) This tax may only be imposed if the municipality does not have in effect an occupation tax imposed on persons engaged in the business of transmitting messages by means of electricity as authorized by Section 8-11-2 (65 ILCS 5/8-11-2) of the Illinois Municipal Code. The municipality imposing the tax provides for its administration and enforcement, not the Illinois Department of Revenue. Therefore, questions regarding this tax should be addressed to the individual municipalities imposing it. There is no equivalent statute for county governments.

In addition, the Emergency Telephone System Act provides that "[t]he corporate authorities of any municipality or any county may, subject to the limitations of subsections (c), (d), and (h), and in addition to any tax levied pursuant to Section 8-11-2 of the Illinois Municipal Code, impose a monthly surcharge on billed subscribers of network connection provided by telecommunication carriers engaged in the business of transmitting messages by means of electricity originating within the corporate limits of the municipality or county imposing the surcharge at a rate per network connection determined in accordance with subsection (c)." (See 50 ILCS 750/15.3(a) and (c).) "The surcharge authorized by this Section shall be collected from the subscriber by the telecommunications carrier providing the subscriber the network connection as a separately stated item on the subscriber's bill." (50 ILCS 750/15.3(f).) This surcharge is paid to the municipality, county or Joint Emergency Telephone System Board. (See 50 ILCS 750/15.3(g).) Questions regarding the surcharge should be addressed to the municipality or county imposing it.

The Department's Board of Appeals administers a voluntary disclosure program that can provide for limited liabilities for participants who come forward and disclose their liabilities. Please see the enclosed copy of 86 Ill. Adm. Code 210.126 for information about the voluntary disclosure program.

I hope this information is helpful. The Department of Revenue maintains a website, which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of Section 1200.110(b).

Very truly yours,

Melanie A. Jarvis
Associate Counsel

MAJ:msk
Enc.